

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Petition For Rulemaking To)
Determine The Terms And Conditions)
Under Which Tier 1 LECs Should Be)
Permitted To Provide InterLATA)
Telecommunications Services)

RM 8303

RECEIVED

SEP 17 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

REPLY COMMENTS OF AMERITECH

Ameritech files its Reply Comments in support of the Petition For Rulemaking in the above captioned matter. Ameritech believes that based upon the record the Commission should initiate a rulemaking about whether the provision of interLATA services (hereinafter "long-distance services") by local exchange carriers ("LECs") is in the public interest as proposed in the Petition and, if so, the terms and conditions under which those LECs should provide the services.

1. RBOC provision of long distance service is in the public interest and adequate safeguards can be applied to prevent cross-subsidization and discrimination.

Like Ameritech's Customers First Plan,¹ the Petition filed by five Regional Bell Operating Companies ("RBOCs") has the potential of benefiting consumers by making long-distance services more competitive, while at the same time preventing discrimination and cross-subsidy. Comments by parties opposing the Petition do not prove that the provision of long-distance services by the RBOCs is not in the public interest, or that adequate safeguards do not exist, or cannot be modified, which eliminate the

¹Petition for a Declaratory Ruling and Related Waivers to Establish a New Regulatory Model for the Ameritech Region ("Customers First Plan"), Case No. DA 93-481, filed March 1, 1993.

reasonable possibility of discrimination or cross-subsidy in the provision of those services. Rather, the Five RBOCs' Petition and the Comments of Ameritech demonstrate that RBOC provision of long-distance services will provide concrete benefits to consumers² and that adequate safeguards exist or can be modified.³ For that reason, the Commission should commence a proceeding on the Five RBOCs' Petition.⁴

2. The Commission has jurisdiction over the Petition.

Some parties imply that consideration of the terms and conditions under which RBOCs should provide long-distance services should be left to the Department of Justice and the courts. However, RBOC provision of interstate long-distance services is within the jurisdiction of the Commission. Sections 151 and 152 of the Communications Act state that it is the Commission's purpose to regulate interstate and foreign communications in order to make available efficient, national communication services.⁵ Clearly, then the Commission has the responsibility, as well as the obligation, to regulate any provision of interstate long-distance services by RBOCs.

In addition, the Five RBOCs in their Petition and Ameritech in its Customers First filing have already demonstrated that the courts have never found that the Commission does not have jurisdiction in this area.

² See Ameritech's Comments at 3-4 for a discussion of the five public interest benefits of RBOC provision of long distance services.

³ See Ameritech's Comments at 5 and Ameritech's Reply Comments on the Customers First Plan filed with the Commission on July 12, 1993, ("Ameritech's Customers First Reply Comments") at 29-43.

⁴ The Commission however should not consolidate its consideration of Ameritech's Customers First Plan with the rulemaking on the Five RBOCs' Petition because both plans are fundamentally different. Specifically, in addition to seeking entry into the long distance marketplace, Ameritech proposes a different market structure, waivers of certain price cap rules, and unbundling of its local loop. Clearly, Ameritech's Customers First Plan raises significant issues which should be considered independently.

⁵ 47 U.S.C. §§ 151, 152.

Specifically, the courts have acknowledged, and in fact have invited, the Commission to address the issue of RBOC provision of long-distance services under the Communications Act.⁶ Consequently, the Petition is appropriately before the Commission for consideration.

3. The Commission should disregard LDDS' unsubstantiated allegations regarding RBOC conduct.

In its Comments, LDDS boldly asserts it proves that "[t]he potential for RBOC anticompetitive conduct is not merely speculation," and includes Attachment A as alleged proof.⁷ While Ameritech cannot speak for the other RBOCs, the alleged practices set forth by LDDS relating to Ameritech are based on nothing more than speculation and blatant distortions of court and regulatory proceedings. Ameritech disputes the facts alleged by LDDS and denies any wrongdoing. Therefore, for the numerous reasons outlined below, the Commission should disregard these allegations.

First, LDDS does not allege that Ameritech has acted in an anticompetitive manner against LDDS. Thus, LDDS has no first hand knowledge or information regarding the underlying facts of the events LDDS cites as proof of Ameritech's alleged wrongdoing. Rather, LDDS resorts to unsubstantiated newspaper accounts of these events, or distortions of court and regulatory orders. Second, many of Ameritech's alleged wrongdoings contained in the newspaper accounts are without any corresponding commission or court action. In this regard, none of the alleged wrongdoing in the newspaper accounts resulted in regulatory or court proceedings in which the facts of Ameritech's action could be verified or substantiated. Apparently, LDDS would have this Commission find Ameritech guilty of

⁶ See Ameritech's Reply Comments filed with the Commission concerning the Customers First Plan on July 30, 1993 at 62.

⁷ LDDS Comments at 5-6 and Attachment A.

anticompetitive conduct based solely on newspaper accounts containing unsubstantiated statements by other parties. Consequently, these articles should be ignored.

Finally, in Attachment A, for those incidents which involve regulatory or court action, LDDS resorts to blatant misrepresentation of the facts. For example, LDDS asserts that the Ohio Supreme Court "held that Ohio Bell had provided 'unjustly discriminatory' access rates and inferior services to Allnet...."⁸ However, that is not the case. The Ohio Supreme Court never found that Ameritech discriminated. Rather, the case involved an appeal to the Ohio Supreme Court from a decision of the Public Utilities Commission of Ohio (PUCO) dismissing Allnet's complaint. The court merely found that Allnet was entitled to a hearing before the PUCO on the allegations contained in the complaint. Thus, the language quoted by LDDS is simply the Ohio Supreme Court describing Allnet's allegations.⁹ It is not a finding that Ohio Bell had in fact discriminated. On remand, on April 15, 1993, PUCO again dismissed Allnet's complaint but on the substantive grounds that Ohio Bell had not violated the law.

Another example of LDDS' distortion of the facts is its allegation that Wisconsin Bell's refund of \$28 million in "excess earnings" constituted "overcharging ratepayers."¹⁰ The refund simply involved "sharing" under an incentive regulation experiment ordered by the Wisconsin Commission

⁸LDDS Comments at Attachment A at 1.

⁹ See Allnet Communications v. Public Utilities Commission of Ohio, 38 Ohio St. 3d 195, 196 (1988). The complete quote from the decision is as follows, "It appears that these allegations do set forth reasonable grounds for complaints that the services, received, the rates for those services, and Ohio Bell's practices are unreasonable, unjust, discriminatory and unjustly preferential in violation of R.C. 4905.32, 4905.33 and 4905.35. The PUCO's entry dismissing Allnet's complaint acknowledges that these issues need resolution. Thus the PUCO was required by R.C. 4905.26 to set a hearing to consider the merits of Allnet's allegations."

¹⁰ LDDS Comments at Attachment A at 2.

for a 1987-89 two year period. The sharing resulted from Wisconsin Bell's ability to increase its efficiency, reduce expenses and increase revenues in response to incentives created by the Wisconsin Commission. The issue in the proceeding discussed by LDDS was a legitimate dispute over the amount of the sharing refund. The consumer advocacy group and some of the commission staff argued for larger refunds, but those arguments were rejected by the Wisconsin Commission after extensive audits and hearings. The case was later remanded back to the Wisconsin Commission to take further evidence. After an additional hearing, the Wisconsin Commission increased the refund by \$3 million, but unanimously rejected the request for a larger refund as argued by the consumer groups. Based on the foregoing, there is no finding that Wisconsin Bell improperly over charged rate payers.

Another example of LDDS' twisting of the facts to create the illusion of wrongdoing by Ameritech is LDDS' allegation of "cross-subsidization" by Ameritech in 1992 based upon comments of AT&T that the RBOCs "improperly implemented sharing and adjustment mechanisms."¹¹ This allegation is based upon AT&T's opposition to the RBOCs' 1992 annual access tariff filings. AT&T was concerned about the method used by some of the RBOCs to share earnings under the Commission's price caps plan. Ameritech responded that it interpreted the Commission's rules as authorizing sharing in a cost-causative manner through allocation of the sharing amounts to the baskets in which Ameritech was able to achieve earnings above the target levels. While the Commission eventually ordered sharing across the board to all baskets, again there was no finding of wrongdoing by Ameritech. Rather, the dispute simply involved a reasonable question of the interpretation of the Commission's rules.

¹¹ LDDS Comments at Attachment A at 4.

4. Conclusion

The Commission should initiate a rulemaking about the issues raised in the Five RBOC's Petition. In addition, based upon the foregoing, the Commission should reject LDDS' comments that Ameritech has engaged in anticompetitive conduct.

Respectfully submitted,

Larry A. Peck (RT)

John T. Lenahan
Larry A. Peck
Barbara J. Kern
Attorneys for Ameritech
2000 W. Ameritech Center Drive
Room 4H86
Hoffman Estates, IL 60196-1025
(708) 248-6074

Date: September 17, 1993

CERTIFICATE OF SERVICE

I, Diana M. Lucas, do hereby certify that copies of the foregoing were sent via first class mail, postage prepaid, to the following on this the 17th day of September 1993:

Diana M. Lucas (RT)
Diana M. Lucas

SERVICE LIST

Martin T. McCue
USTA
900 19th St., N.W., Ste. 800
Washington, DC 20006-2105

Maureen A. Scott
Pennsylvania Public Utility Commission
G-28 North Office Building
Commonwealth and North Streets
P.O. Box 3265
Harrisburg, Pennsylvania 17105-3265

Donald F. Evans
MCI Communications Corporation
1801 Pennsylvania Ave., NW
Washington, DC 20006

Cindy Z. Schonhaut
MFS Communications Company, Inc.
3000 K Street, N.W., Suite 300
Washington, DC 20007

Andrew D. Lipman
Russell M. Blau
SWIDLER & BERLIN, Chartered
3000 K Street, N.W.
Washington, DC 20007

Catherine Reiss Sloan
LDDS Communications, Inc.
1825 Eye Street, N.W.
Washington, DC 20006

Danny E. Adams
Wiley, Rein & Fielding
1776 K Street, NW
Washington, DC 20006

Randolph J. May
Timothy J. Cooney
Capital Network System, Inc.
Sutherland, Asbill & Brennan
1275 Pennsylvania Avenue, N.W.
Washington, DC 20004

Paul Rodgers
Charles D. Gray
James Bradford Ramsay
National Association of Regulatory Utility
Commissioners
1102 ICC Building
Post Office Box 684
Washington, D.C. 20044

Roy L. Morris
ALLNET
1990 M Street, NW, Suite 500
Washington, DC 20036

Genevieve Morelli
Competitive Telecommunications
Association
1140 Connecticut Ave., N.W., Suite 220
Washington, DC 20036

Richard E. Wiley
Danny E. Adams
Edward Yorkgitis, Jr.
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, DC 20006

Jeffrey L. Sheldon
Thomas E. Goode
Utilities Telecommunications Council
1140 Connecticut Ave., N.W., Suite 1140
Washington, DC 20036

Bob F. McCoy
Joseph W. Miller
John C. Gammie
WILTEL INC.
Suite 3600
One Williams Center
Tulsa, Oklahoma 74102

Steven Gorosh
CENTEX Telemanagement, Inc.
185 Berry Street
Building 1, Suite 5100
San Francisco, CA 94107

Herbert E. Marks
David Alan Nall
Squire, Sanders & Dempsey
Independent Data Communications
Manufacturers Association, Inc.
1201 Pennsylvania Avenue, N.W.
P.O. Box 407
Washington, DC 20044

Joseph P. Markoski
Andrew W. Cohen
Squire, Sanders & Dempsey
Information Technology Association
of America
1201 Pennsylvania Avenue, N.W.
P.O. Box 407
Washington, DC 20044